IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1014 OF 2004

Mrs.Sujata Madhukar Dhavale & Ors. ..Appellants

Versus

The General Manager

Pimpri Chinchwad Municipal corpn. ..Respondents

Mr.M.B.Kotak for appellants

Mr.N.V.Walawalkar for respondents

CORAM : P.V.KAKADE, J.

DATE : 20TH OCTOBER, 2004

P.C.:

1. This an appeal preferred by the appellants, whose claim application under Section 166 of the Motor Vehicles Act, came to be dismissed by Order dated 11.9.2003 by the Addl. District Judge and Member, Pune.

2. I heard the learned counsel for both sides. Perused

the record including the judgment. The glaring feature weighing over the mind of the Judge while dismissing the appeal appears to be the FIR and Panchanama of the impugned accident were not technically proved and as such it was held that those were not admissible in evidence and therefore there was no corroboration to the evidence led by the Applicants. In this regard I must note that the claim application was filed by the applicants, who are widow and minor children of deceased Madhukar Dhavale, who unfortunately met with an accident and died in the incident. The learned trial judge should have exhausted all remedies to do the justice and should not have dismissed the matter only on observation that since the contents of FIR and Spot Panchanama were not proved, those could not be read in evidence and hence there was no corroboration to applicants evidence. It also appears on record that the learned Member of the Tribunal appears to have accepted the story of the driver of the vehicle, which met with an accident. I do not wish to make any comment on this aspect, however, the fact remains that the applicants should be given fair and exhaustive opportunity to prove their claim, especially when it is filed by a widow and minor children of the deceased.

3. Hence the Order dated 11.9.2003 dismissing the claim petition passed by Addl. District Judge Pune in Claim Application No.392 of 2000 is set aside and appeal is allowed. The appeal is remanded back to the learned Addl. District Judge/Member of the Tribunal, Pune to adjudicate it afresh after giving opportunity to both the sides to lead the evidence, if any, more particularly by examining the witnesses concerned with preparation of spot panchanama and recording of FIR in the course of investigation of the said accident. The claim application to be adjudicated expeditiously and shall be disposed of in any case within six months from the date of receipt of Writ of this Order. With this direction the appeal stands disposed of. Consequently the civil application also stands disposed of.

All concerned to act on an copy of this order duly authenticated.